Volume: I

Pages: 1 to 84

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

C.A. NO. 04-10738-MLW

EBEN ALEXANDER, III, M.D.,

Plaintiff,

vs.

BRIGHAM AND WOMEN'S PHYSICIANS ORGANIZATION, INC., successor to BRIGHAM SURGICAL GROUP FOUNDATION, INC. BOSTON NEUROSURGICAL FOUNDATION, INC. DEFERRED COMPENSATION PLAN, BRIGHAM SURGICAL GROUP FOUNDATION, INC. FACULTY RETIREMENT BENEFIT PLAN COMMITTEE ON COMPENSATION OF THE BRIGHAM SURGICAL GROUP FOUNDATION, INC., and PETER BLACK, M.D.,

Defendants.

DEPOSITION OF STEPHEN SADOWSKI

Wednesday, September 13, 2006; 2:06 p.m.

Nystrom Beckman & Paris, LLP

10 St. James Avenue, Boston, MA

Court Reporter: Kathryn L. Santo

to the organization management and financing of the activities of faculty at the medical school or teaching hospital. The nature of that work tends to be on performance improvement.

Q. Have you ever been consulted to structure a compensation program from scratch?

A. Yes, I have. To the best of my knowledge, I've done it a number of times.

Q. So is it fair to say that your role consists of structuring compensation programs and improving performance at places in which a compensation program is already in place?

MS. HUBBARD: Objection.

A. Could you repeat the question?

Q. I'm just trying to get a sense of whether you, as a consultant, go into these academic medical centers and set up the compensation programs or there's one already in place and you work to improve it or both?

A. To the best my knowledge or description, I'd say both. Most often, there is a compensation program of some type in place, but certainly, on occasion, there are circumstances that create the need for new compensation programs that I have been

wage and physicians who receive, by comparison, substantially greater compensation. And again, based on my experience and understanding of IRS requirements under qualified programs, those tests will often limit the amount of compensation that can be devoted to the retirement program.

In addition, there are statutory caps as well on the magnitude of funds that can be devoted to retirement. And so oftentimes, at least in those circumstances, highly compensated physicians are looking for opportunities to optimize the amount of their contribution or their company's contribution in the group practice to their retirement program, as an example.

Q. Did you say the physicians were looking to optimize the amount of contributions to their retirement programs?

A. In -- sometimes. Oftentimes, that's the case. I would say it depends on the nature of the specialty. Often, physicians, by specialty, vary in the degree of -- or in the magnitude of compensation -- are eligible to earn or what the market will pay.

Q. Okay. So going with your example -- and

Q. The IRS limitations.

A. Yes. I'm not familiar with why the BSG may have -- what drove them to develop a deferred compensation program or what put them in place. I could speculate on why they put one in place, but I don't have -- I'm not sure.

Q. You have no personal knowledge as to the genesis of the UDC or the FRBP?

A. Not -- no, no personal knowledge.

Q. Do you have an opinion as to the purpose of these plans?

A. I -- yes. I have an opinion on the purpose. My assumption is that those plans -- that plan was put into place to create retirement savings opportunities that were otherwise constrained by the market and then regulation -- regulation rather than the market; that, two, they were likely put into place as a vehicle for recruitment so that group could offer an enhanced compensation opportunity.

And my opinion would also be that they were likely put into place a retention vehicle to -- in an effort to bond employed physicians to the group. Again, that's all speculative on my

(Brief recess taken from 2:47 p.m to 2:54 p.m.)

A. I just wanted to take the opportunity to clarify -- if that's okay -- my testimony from before. That when I referred to speculating on this, that is my opinion based on both my experience and review of the documents that I referenced earlier.

Q. And I think that you already testified that your experience -- you have no experience with Harvard; is that right?

MS. HUBBARD: Objection.

A. No experience with Harvard as it relates to compensation program or compensation guidelines, which is what I believe the question was.

Q. Well, you have no personal experience with consulting for Harvard; right?

A. Not for Harvard Medical School. I do currently have an engagement with Partners Health System, which is an affiliate of Harvard.

Q. Right. And does your engagement with Partners consist of examining deferred compensation plans for them?

A. It does not.

Q. I'm trying to understand that.

A. Again, it's based on my experience and review of the documents, but that's my opinion.

Q. No. I understand it's your opinion. I'm just -- I'm trying to understand why and how you are able to reach the opinion that it's the primary purpose, as opposed to the other purposes that you've given me today.

A. The reason I would say it's the -- I believe it's the primary purpose, again, is based on my experience, first of all, with why such plans are put into place. And as I believe I mentioned earlier, we often put those -- these types of plans into place because we have constraints on our retirement programs. So a nonqualified compensation program provides a retirement opportunity that wouldn't otherwise exist so that fosters the ability to recruit.

That's why I have seen clients seek out these types of programs. And so it is not a leap for me to believe that Boston Surgical -- that Brigham Surgical Group would do the same.

In reviewing the documents, the structure and description of the plans were such that it's

One of the caveats that I would put on that are -- is a not-for-profit corporation. We have limitations on magnitudes of compensation. We have a need to fund other missions. It would give us business imperatives to limit compensation. There are other constraints on compensation like National Institute of Health caps on research salaries.

Q. In your experience -- have you finished your answer?

A. Yes.

Q. Okay. In your experience as consultant to numerous academic medical centers, have you come across situations where there is a salary cap in place?

A. Yes. There are -- let me be cautious here. Salary guidelines are in place typically at a number of institutions.

Q. Well, Harvard has a salary sealing; right?

A. They do. It's as described -- from what I looked at in the document, what's described as salary guidelines appears to be, based on review of the document, a formulaic cap with exception procedures.

Q. And have you come across such a formulaic cap with exception procedures in your experience at other academic medical centers?

A. Yes. I believe, to the best of my knowledge, that there are such constraints within the SUNI system in New York, as an example. I would add to this that nearly most academic medical centers are nonprofit organizations.

Q. What significance does that have?

A. So they are subject to concerns about unreasonable levels of compensation. So whether they are formulaic caps or policies and procedures in place that act as caps to ensure their compensation doesn't exceed certain limits, they intend to be a practical reality.

Q. And what, in your experience given this practical reality, is the solution to paying these doctors market level?

MS. HUBBARD: Objection. Doctors at --

MS. COOK: Well, in his experience. I mean, he's not specifying any particular academic medical center.

Q. So in your experience as a consultant, when you are faced with the practical reality of

specific, and I want to --

Q. Let's break it down.

A. -- make sure I'm responsive.

Q. You're talking about top-hat plans --

A. Correct.

Q. -- right? Let's just say --

A. Deferred compensation programs, but sure, top-hat plans.

Q. Let's call it a top-hat plan.

A. Okay.

Q. And is that a group plan, or is that an individual plan?

A. It is a group plan.

Q. Okay. And with respect to the terms of that group plan, is it your understanding that the people that would be covered by that plan have bargaining power with respect to negotiating the terms of that plan?

MS. HUBBARD: Objection.

A. I -- I would -- I'm sorry. I guess I don't like the term "bargaining power." They would exert influence -- they would certainly be able to exert influence as the -- presumably over the nature, design of the plan.

Q. And how would they do that?

A. As -- in a circumstance where it's management, as managers with responsibility for the compensation program, they would do it. And circumstances where it's highly compensated employees, they would presumably do it by virtue of stature and concerns about the threat of departure and termination.

However, you know, if there's -- depending on the nature of the government's structure, the degree to which those groups can or cannot influence the construct of the plan is real or not real.

Q. So if I boil it down, you're saying it basically depends on the governing structure?

A. I believe it depends on the governing structure.

Q. But you don't know anything about the BSG's governing structure; right?

A. I do not.

Q. Have you published anything on top-hat plans?

A. I have not, and I don't believe, to the best of my recollection, that I referenced them in

nonqualified deferred compensation plans is to provide highly compensated physicians with a means to supplement their retirement funds and to maximize after-tax compensation." Do you see that?

A. Mm-hmm. I do.

Q. What do you mean by that statement?

MS. HUBBARD: Objection.

A. When you say what do I mean by that statement --

Q. Well, let me ask you this: What's the basis for this statement?

A. Again, in my experience where clients have their existing or adopted nonqualified retirement, nonqualified deferred compensation programs, it is most often as a means supplement retirement funds.

Q. Okay. And you say a principle reason is to do that; is that right?

A. Yes.

Q. What are other reasons?

A. Other reasons would be to provide a vehicle. Nonqualified plans, to my knowledge, as an example, are prevalent in business generally, but they are not prevalent in health care or

academic medicine by comparison. So it does offer a distinctive advantage when recruiting a faculty member to have that enhanced retirement opportunity.

Q. And by "nonqualified plan," you mean a top-hat plan?

A. Sure.

Q. Okay.

A. A second reason is, I think, to foster retention, since that deferred compensation program is most often an asset of the corporation. So it becomes of interest to the faculty to ensure that that corporation is a going concern so that it can foster its retention in that matter.

Q. In your opinion, are these all reasons for -- purposes for the UDC and the FRBP?

MS. HUBBARD: Objection.

A. In my opinion, they are purposes that would appear to me were likely factored into the thinking of -- it seems clearer to me from what I've read that it was perhaps maybe a bit more focused on retention than ; although, it seems that was likely an important point, too but retention seems to be.